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10
11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF WASHINGTON**

13 DAROLD R.J. STENSON,

14 Plaintiff,

15 v.

16 ELDON VAIL, ET AL.,

17 Defendants.

NO. CV-08-5079-LRS

DEFENDANTS' **AMENDED**
NOTICE OF APPEAL OF
PRELIMINARY
INJUNCTION OR, IN THE
ALTERNATIVE, APPEAL
OF INTERLOCUTORY
ORDER

THIS IS A CAPITAL CASE

18 Notice is hereby given that Defendants, Eldon Vail, et al., by and through
19 their attorneys, ROBERT M. MCKENNA, Attorney General, JOHN J.
20 SAMSON and SARA J. OLSON, Assistant Attorneys General, appeal to the
21 United States Court of Appeals for the Ninth Circuit from the Court's Order
22 entering a stay of Darold R.J. Stenson's execution, currently scheduled for
December 3, 2008, entered in this action on the 25th day of November, 2008.
This notice of appeal is entered as a matter of right, under 12 U.S.C. § 1292(a),
as the underlying order is, in effect, a preliminary injunction.

1 In the alternative, this notice of appeal is filed under 12 U.S.C. § 1292(b)
2 as the district court's interlocutory order certifies that the order is appealable as
3 it "involves a controlling question of law as to which there is a substantial
4 ground for difference of opinion and that an immediate appeal from the order
5 may materially advance the ultimate termination of the litigation."

6 DATED this 25th day of November, 2008.

7 ROBERT M. MCKENNA
8 Attorney General

9 /s/ John J. Samson

10 /s/ Sara J. Olson

11 JOHN J. SAMSON, WSBA #22187

12 SARA J. OLSON, WSBA #33003

13 Assistant Attorneys General
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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2008, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

SHERILYN PETERSON
RICHARD COYLE

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RCoyle@perkinscoie.com

/s/ Kathy Jerez
KATHY JERENZ
Legal Assistant